

Atty's 21795

Pat. App. 09/894,487

AMENDMENT TO THE DRAWING

**Please substitute the accompanying one "Replacement
Sheet" for the one on file.**

REMARKS

The present amendment is submitted in an earnest effort to advance this case to issue without delay.

1. The priority claim acknowledgment in paragraph 12 of PTOL 326 is appreciated.

2. A replacement sheet has been submitted for the drawing. The replacement sheet has appropriate labeling.

3. The Examiner's comments with respect to the traverse of the restriction requirement has been noted.

Claims 12 to 21 directed to the apparatus have been cancelled without prejudice to Applicants right to claim the same or similar subject matter in a divisional application.

4. The change suggested as to claim 3 to avoid an objection to that claim has been made.

In addition, claim 10 has been placed in independent form by the incorporation of the subject matter of claim 3 therein. Claim 10 thus contains features of claim 1 dealing with the storage of the homeopathic information in a music compression format like

MP3 as well as the features of claim 3 requiring communication of the information through the internet.

As has been noted, claims 12 to 21 are canceled without prejudice.

5. Claims 1 to 11 have been rejected under 35 USC 112, first paragraph as allegedly lacking enablement. In particular the Examiner has asserted that the disclosure does not "adequately disclose how electromagnetic (EM) spectra containing "homeopathic" information is obtained" and how electromagnetic (EM) spectra are "stored in a music compression format."

Notwithstanding this statement the Examiner expressly recognizes that DILLINGER Patent 5,830,140 discloses that it is known to obtain and store homeopathic information in the form of low frequency (Up 0 to 22 KHz) electromagnetic (EM) spectra.

Reconsideration of this position is requested on both grounds.

Firstly, judicial notice should be taken of the fact that music and audible sound is sound within the range of 0 to 22 kHz. In fact that segment of the spectrum is recognized as being predominantly occupied by the portion of the spectrum which constitutes audible sound and thus also music. Various definitions of audible sound and music place the music spectrum, depending upon the acuteness of hearing, generally in the range of 30 Hz to 20 kHz.

Thus any music compression system operating with such frequencies will serve as support for the steps here of storing the homeopathic information, obtained as in DILLINGER et al, for example, in a music compression mode.

As to the obtaining of homeopathic information in the form of electromagnetic signals forming part of the electromagnetic compression, the Examiner cannot discard DILLINGER et al. While Applicants believe that DILLINGER et al has been "expressly incorporated by reference" in the present application and thus serves as the starting point for the present disclosure, which indeed begins with the obtaining of the homeopathic information in the form described by DILLINGER et al, there certainly is nothing in the patent law or in 35 USC 112 which requires that prior art be "wholly incorporated by reference" in an application or, for that matter incorporated in a reference at all. It is well settled that an Applicant may begin where his invention begins and describe that which he has made that is new. That which is old is considered as if it had been written out in the application originally whether or not there is express incorporation by

reference. The Examiner may wish to refer to *In re CHILOWSKI*, 108 USPO 321 and the entire line of cases which have maintained that as a principle through the ages.

Thus even if Applicants here had made no mention of DILLINGER et al at all, DILLINGER et al would be incorporated for every word, concept and nuance as the starting point of the present invention.

But DILLINGER et al is incorporated by reference at least in so far as it describes precisely how electromagnetic (EM) spectra containing homeopathic information is obtained. At page 3 of the instant specification at lines 3 ff the specification states that the DILLINGER patent discloses just that. But Applicants need not rely solely on DILLINGER et al in that respect. The two Austrian references are equally part of the background. They too disclose electromagnetic signals representing homeopathic information. It is a proper starting point for the present disclosure that electromagnetic spectra, precisely of the kind which can be subjected to compression by a music compression format, can carry homeopathic information.

The Examiner's suggestion that the DILLINGER et al spectrum of electromagnetic information could not work in the context of a music compression format is somewhat specious in that the carrier wave referred to in DILLINGER et al is not used for storage but for reproduction of the homeopathic information and thus

is irrelevant as to the ability to use a music compression format on electromagnetic signals in DILLINGER et al which carry homeopathic information.

Thus it is clear that DILLINGER et al provides a basis as to how electromagnetic spectra containing homeopathic information is obtained and the MP3 art a basis for how the electromagnetic signals can be compressed in a music compression format. There is no lack of enablement on either point.

6. The Examiner suggests that the specification does not adequately disclose what wavelengths are applied for particular homeopathic therapies and as to that Applicants must note that again the issue is not which specific signal carrying which specific homeopathic information is stored and subsequently used for treatment. The DILLINGER et al and Austrian references put that information in the possession of the public to the extent that that information may be required by the ordinary worker in the art desiring to practice the invention. Applicants' improvement is found in the internet application and the MPS or similar music compression storage than in a surprising and unobvious result can allow treatment homeopathy in cases and in which such treatment was far more complex earlier.

The invention is not which wavelengths treat digestive disorders, but how that homeopathic information is ultimately conveyed to the treated individual and how it is stored as to be

that there is full enablement. As to the questions the Examiner raises one need only refer to the literature.

There is, therefore, no lack of enablement based upon the Examiner's position in the last paragraph of page 4 of the Office Action.

7. Claims 1 to 11 distinguish clearly over DILLINGER et al as taken with KIM. As noted previously claims 1 and 2 are directed to the storage of homeopathic information which has been digitalized in a music compression format. Claims 3 to 9 are directed to the use of global information network like the internet for transmitting homeopathic information. Claims 10 and 11 recite the combination.

DILLINGER et al has been admitted by the Examiner not to disclose "storage/reproduction of the electromagnetic information" which represents "homeopathic information in digital format" in "compressed music format." The KIM reference uses electronic signals for color therapy, acoustic therapy and a variety of other therapies but fails to indicate in any way that any signal thus used contains any homeopathic information whatsoever. The only way the references can have any relationship to one another is based upon hindsight from the instant disclosure (W.L. Gore & Associates, Inc. v. Garlock, Inc. 220 USPO 302 @ 312,313 and Panduit Corp. v. Dennison Mfg. Co. 227 USPQ 337). Such use of hindsight application of prior art is prohibited.

There is not a thing in DILLINGER et al which would suggest that a music compression format could or should be used for storage of the homeopathic information nor anything in KIM which would suggest that homeopathic information could be or should be part of the signals processed.

It follows that under the principle of *Ashland Oil ASHLAND Oil, Inc. v. Delta Resin and Refractories*, the combination is not suggested by anything in either reference.

Accordingly, because the references cannot be combined in an obvious way and because the references do not suggest combination, the rejection on DILLINGER et al with KIM must fail.

But even if the combination would be considered to be obvious and could be made in the sense that DILLINGER et al could be modified to utilize signal storage as in KIM, it is not clear that the storage would involve a music compression format of the MP3 type or the like. The disclosure of storage in KIM is far too diffuse to place music compression format storage into the DILLINGER et al system.

The addition of KEHR et al to the combination is intended by the Examiner to be an effort to show that the use of an MP3 or like music compression format would be obvious in the context of DILLINGER et al and KIM. Here again the Examiner is using pure and impermissible hindsight. Nothing in KEHR et al, which involves medical databases and protocols, would suggest that MP3 compression

might be used with electromagnetic signals containing homeopathic information.

The reference at [0274] in KEHR et al is to musical notes for an alerting purpose which "may be selected from recorded live music, from music synthesizers, from recorded music, or alternatively they may be downloaded from various internet sites...", reference being provided to Napster.com. Is the Examiner suggesting that Napster.com supplies homeopathic information? Certainly not!

Clearly the reference to MP3 in KEHR et al has nothing whatever to do with obtaining homeopathic information and processing it in the form of electromagnetic waves or transmitting it over the internet or subjecting it to MP3 or another music compression format.

Claims 1 to 11 are thus deemed to be allowable and an early notice to that effect is earnestly solicited.

8. A request for an automatic three month extension of the term is enclosed together with a charge form applying the fee to a charge card of the undersigned.

Respectfully submitted,
The Firm of Karl F. Ross P.C.



By: Herbert Dubno, Reg. No. 19,752
Attorney for Applicant

Enc: Replacement Sheet
Petition For Extension
PTO 2038 Charge Form

April 27, 2005
5676 Riverdale Avenue Box 900
Bronx, NY 10471-0900
Cut. No.: 535
Tel: (718) 884-6600
Fax: (718) 601-1099

ge-